



BEFORE THE MONTGOMERY COUNTY ETHICS COMMISSION

Waiver No. 05-02-004W

Absent a waiver, a former public employee cannot work for someone else on a “specific matter” for 10 years after the last date the employee “significantly participated” in that matter as a public employee. § 19A-13(a). Also, for one year after leaving County employment, a former employee must not enter into any employment agreement with any person or business if, during the prior three years, the employee significantly participated in any procurement or other contractual activity concerning a contract with that person or business. § 19A-13(b). Arthur G. Balmer, Chief of the Solid Waste Services Division, seeks a waiver of these prohibitions in order to pursue post-County employment with the Maryland Environmental Service, a public instrumentality of the state. The Commission will waive the prohibitions of § 19A-13(a) and permit Mr. Balmer to work for MES on the same specific matter he significantly participated in as a public employee so long as that work is performed pursuant to a contract between the County and MES. The Commission will waive the prohibitions of § 19A-13(b) because of the public nature of the prospective employer.

Facts

Arthur G. Balmer is the Chief of the Solid Waste Services Division in the Department of Public Works and Transportation. The Division manages the County’s solid waste. This includes management of contracts for trash collection in the down-County area and curbside recycling for single-family homes. The Division also oversees operation of the Solid Waste Transfer Station (where local citizens and haulers bring trash, recyclables, and yard trim for delivery to its corresponding facility for processing), the nearby Materials Recovery Facility (the Recycling Center), and the County’s two closed landfills (Gude and Oaks). The Division also oversees the operation and maintenance of the Resource Recovery Facility (where waste is transported, burned at extremely high temperatures, and the heat used to generate energy in the form of electricity or steam) and the Composting Facility (where yard trim is brought to be composted and monitored; after composting, it is screened, bagged, and sold under the brand name of Leafgro).

Some of these projects (the Solid Waste Transfer Station, the Materials Recovery Facility, and the Composting Facility) are actually operated by MES, under an agreement with the County. Created by the state in 1970, the Maryland Environmental Service is a nonprofit public corporation that provides water supply systems and manages liquid, solid, and hazardous wastes for the federal, state, and local governments, as well as private industry. MES does not have regulatory authority and is not funded through direct appropriations. It is self-supporting, generating operating funds through fees charged for its services. MES may also issue revenue

bonds.¹ Mr. Balmer proposes to work for MES as their Director for Environmental Operations, with responsibility for its three component divisions: Water and Wastewater, Solid Waste and Materials Handling and Cogeneration.

19A-13(a)

Absent a waiver, a former public employee cannot work for someone else on a “specific matter” for 10 years after the last date the employee “significantly participated” in that matter as a public employee. § 19A-13(a). Significant participation “means making a decision, approval, disapproval, recommendation, rendering of advice, investigation, or similar action taken as an officer or employee. Significant participation ordinarily does not include program or legislative oversight, or budget preparation, review, or adoption.” § 19A-13(c).

In at least some instances, MES will call upon Mr. Balmer to work on the same specific matter he worked on as a County employee, including such projects as the Solid Waste Transfer Station, the Materials Recovery Facility, and the Composting Facility. Mr. Balmer notes that he has had “responsibility for negotiating many multi-million dollar contracts” with numerous entities, including MES and the Northeast Maryland Waste Disposal Authority, another state-created public corporation. As the chief of the division with oversight of the projects, the Commission has no difficulty concluding that Mr. Balmer significantly participated in the operation of these projects. For one year after leaving County employment, a former employee must not enter into any employment agreement with any person or business if, during the prior three years, the employee significantly participated in any procurement or other contractual activity concerning a contract with that person or business. § 19A-13(b). Thus, if Mr. Balmer is to work for MES on these projects, he must have a waiver.

The Commission may waive the prohibitions of § 19A-13 “if it finds that (1) failing to grant the waiver may reduce the ability of the County to hire or retain highly qualified public employees; or (2) the proposed employment is not likely to create an actual conflict of interest.” § 19A-8(c). The Commission finds that the proposed employment is not likely to create an actual conflict of interest because Mr. Balmer will essentially be doing the work for the County’s benefit, albeit through a contractor—MES. The Commission has previously granted a waiver in a similar situation where the employee proposed to work on the same matter for a County subcontractor. *Waiver No. 03-017* (May 15, 2003).

¹ Although its mission is quite different, the operation of MES is not dissimilar from the Montgomery County Revenue Authority, an instrumentality of the County.

19A-13(b)

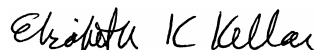
Section 19A-13(b) provides that, for one year after leaving County employment, a former employee must not enter into any employment agreement with any person² or business if, during the prior three years, the employee significantly participated in any procurement or other contractual activity concerning a contract with that person or business. The Commission understands that Mr. Balmer has significantly participated in contractual activity with MES within the past three years. Nonetheless, the Commission believes that a waiver is appropriate to allow him to pursue employment with MES. Section 19A-13(b) is intended to preclude a public employee from offering a contractor a favorable recommendation (or action) in a procurement matter in exchange for a latter offer of employment. The evil that this section of the ethics law is designed to prevent is unlikely to occur when the proposed employer is a public entity subject to its own stringent procurement regulations and the state's ethics law, as opposed to a private company with a profit motive. The MES, like the Northeast Maryland Waste Disposal Authority, is part of a network of public corporations serving the environmental needs of Maryland citizens through agreements with both public and private entities. We conclude a waiver is appropriate under these circumstances.

Conclusion

Mr. Balmer may work for MES. Pursuant to a contract between the County and MES, he may work for MES on the same specific matter he significantly participated in as a public employee.

FOR THE COMMISSION:

Date: March 10, 2005



Elizabeth K. Kellar, Chair

² Although the courts have held that the word "person" in a statute does not include the state, its agencies, or subdivisions unless an intention to include these entities is made manifest by the legislature, *see, e.g., Unnamed Physician v. Comm'n on Medical Discipline of Md.*, 285 Md. 1, 21, 400 A.2d 396, 402 (1979), that rule is limited to situations where the statute seeks to impose some duty or restriction upon the person/government. The typical issue in such cases is whether the government is subject to its own laws. In this case, the statute imposes a restriction upon an individual (the public employee), not a governmental entity.